



MAPERS

The Michigan Association of Public Employee Retirement Systems (MAPERS), which represents nearly 120 independent local pension plans throughout the state of Michigan, appreciates the legislature's willingness to reach-out to MAPERS for our input on HB 4001, and indeed if invited to do so, MAPERS can be prepared to offer assistance on revisions. We have had some time to review the latest draft of the legislation, and at this time, MAPERS remains opposed to HB 4001.

MAPERS does appreciate the efforts in the new draft to accommodate some of the organization's concerns; however, this new draft causes MAPERS some concern:

1. In the charging of labor costs, there is often a vast difference between the lowest-paid employee capable of searching for and locating the records in question, and the lowest-paid employee capable of examining those records (i.e. a lawyer); this disparity causes confusion in the charges that are most fair, and given the size and nature of the penalties later in the bill, that uncertainty could be very damaging to the local pension plan;
2. Apart from possibly having to account for the costs of multiple "lowest-paid" employees for different tasks within the same request, the bill obligates that employee account separately for the time (rounding-down, thus giving up to 14 minutes free) taken on each task;
3. In the identification of "unreasonably-high costs" that a local pension plan would potentially have to bear, what entity ultimately determines whether or not a public body has adequately identified those reasons and whether or not those reasons stand up to scrutiny? Will every time a public body applies some cost to a FOIA request there be a suit to determine the veracity of those costs? Again, given the nature and size of the penalties within HB 4001, ambiguity could end up being extremely costly for the local plan;
4. 10 cents-per-copy is a very low cap on costs associated with copying and scanning;
5. Subsection (2), beginning on page 4, regarding indigency:
 - a. Asking local plans to subsidize an extra \$30 (now up to \$50 in the bill) for the privilege of providing no- or low-cost information includes extra burdens on local plans in order to keep track of these subsidized FOIA as well as how much money the local plan has to absorb;
 - b. While it is helpful that a requestor who claims indigency cannot be taking payment from another requesting organization and still meet the new \$50 subsidy, whose job is it to keep track of each person making such a claim to then hold each such person to their twice-a-year limit? At what cost to keep such a list?
 - c. When does the "year" start for these twice-a-year requests? Calendar year for potentially everyone? Or from each individual's first request?

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- d. When an indigent person requests information not directly related to her- or himself, they must provide a reason. Is that reason enough, or is there some way to weigh the validity of that reason;
 - e. Relatedly, it is very helpful that requests for commercial purposes are automatically illegitimate requests, but only in terms of whether or not an individual qualifies for the subsidized "indigent" exemption. If the purpose of FOIA is government transparency, should that stipulation apply to the legitimacy of any request (that FOIAs for commercial purposes either qualify for no exemptions at all or a different cost/fee schedule);
 - f. Subparagraph (B) on page 5 reads that only one certain type of nonprofit organization qualifies for the indigency exemption. First, clients of one type of organization may not all be indigent. Second, there are other types of organizations that serve indigent clientele. Perhaps it is better to allow any agency or advocate to provide documentation that their client is indigent, rather than accidentally exclude organizations that have indigent clients who, could they request themselves, would qualify for the exemption;
6. Subsection (3) no longer includes language to the effect that the proverbial "clock" for response from the local plan stops while the plan waits for a sufficient deposit. This should be added back in;
 7. Requiring invoices (Subsection 4) not only adds more cost for the paper it takes to make invoices, but also adds cost for the extra storage the large amount of requests would make were invoices required. Further, the information in each invoice – the itemization of the six "fee categories" in each invoice – simply adds to cost and the already-complicated calculation of fees (outlined above);
 8. Adding another administrative burden to local plans – in this case the need to cross-reference what data is available publicly on a web site with all of the data collected to fulfill a particular request – is time-consuming and costly. Can this be considered for "unreasonably-high costs?"
 9. Subsection (7) allows a "best-effort" estimate of the time it will take to fulfill a request; however, there is already a 5-day limit and a 10-day extension. Why, then, the requirement for a time estimate that is ultimate not binding? And what entity determines, if the requesting party is unhappy with the estimate or the outcome (not exceeding 15 days in any case), whether or not the local plan acted in good faith?
 10. A \$5,000 fine is akin to – or in some cases worse than – fines associated with certain drug felonies and selling firearms to felons, by way of example. Further, city, township, and village populations fluctuate to the point where in one given month, a city would be exempt from that hefty fine and yet a few months later would suddenly qualify. Given ambiguities in the bill regarding enforcement, when timelines and charges do and don't apply, and what constitutes the need for certain costs, the fine is extreme.

All of these problems compound what is the core of MAPERS' concern with HB 4001. Essentially, FOIA requests are a necessary obligation of any public body, but they are always very costly, and always very frequent. Especially for requests made to pension plans, many businesses take the information that cost a public body significant amounts of money to which to comply, and then make a profit from that

information. Gleaning information about a successful, well-funded local plan's investment portfolio, for example, could then be sold by a business to its clients as if it were its own product.

MAPERS worked hard last session with Senator Mark Jansen to pass Public Act 347 of 2012, an update to the public employee retirement system investment act (colloquially called PA 314). That act requires a large measure of free, accessible public information regarding public pension plans across the state. For instance, PA 347 of 2012 requires an annual summary report which includes investment performance net of fees, administrative and investment expenditures, a plan's itemized budget, and other actuarial data about the plan. Further, the Act requires plans to prepare and maintain written policies regarding ethics, professional training and education, and travel. Thus, MAPERS is not averse to providing good, public information in the name of government transparency. Given that, HB 4001 gives the association great concern, enumerated above.

MAPERS would appreciate being a part of negotiations on HB 4001, and agrees with the Michigan Municipal League's workgroup proposals as suggested changes to the bill. However, in its current form, HB 4001 seems to punish every local plan for behavior not necessarily exhibited by all public bodies, with no consideration for abuses of the FOIA privilege from requestors. Though MAPERS doesn't agree that the current FOIA system is "broken," we could come to a place where all parties could agree on inadequacies and imbalances that can be fixed to make a clearer, less ambiguous process.

